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HODAN-R SDN BHD

v.

DATO' MOHD HISHAMUDIN HJ MOHD YUNUS

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HIGH COURT MALAYA, KUALA LUMPUR
RAMLY ALI J

[SUMMONS NO: D5-22-1661-2006 (S7-22-992-2006)]
13 MARCH 2007

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CIVIL PROCEDURE: *Pleadings - Striking out - Claim against High Court judge - Orders made by judge while handling civil suit - Whether within ambit of immunity accorded by law - Whether claim disclosing no cause of action - Whether flawed and unsustainable - Rules of High Court 1980, O. 18 r. 19(1)(a), (b) and (d) - Courts of Judicature Act 1964, s. 14(1)*

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CONSTITUTIONAL LAW: *Courts - Judges - Judicial immunity - Immunity from civil liabilities - Extent and scope - Courts of Judicature Act 1964, ss. 14, 23, 25 - Federal Constitution, arts. 121(1), 122B(i)*

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This was an application by the defendant, a serving High Court judge, to strike out the plaintiff's writ and statement of claim pursuant to O. 18 r. 19(1)(a), (b) & (c) Rules of the High Court 1980, on the ground that the claim disclosed no reasonable cause of action and were scandalous, frivolous, vexatious and an abuse

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of process. The plaintiff was aggrieved by the actions of the defendant as the presiding judge in Civil Action No. S-3-23-33-2005, in which the plaintiff was the defendant, *inter alia* for taking nine months to dispose off an injunction application therein; giving contradictory directions to the parties; directing the parties to file

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numerous written submissions on the same issue; making orders that were contradictory to one another; and wrongly awarding a Property Preservation Order against the plaintiff. It was the plaintiff's stand that the defendant, by the actions, was guilty of malice, case fixing, judicial misconduct and biasness. Hence, by its

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claim herein, the plaintiff sought to strike the orders made by the defendant, prohibit the defendant from further conduct of the matter and recover from the defendant more than RM30 million in damages and loss of expectancy. The defendant contended that the claim was devoid of any cause of action, and was

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obviously unsustainable, as he was in law protected by judicial immunity. Hence, the application to strike out.

Held (allowing application and striking out claim):

- (1) The plaintiff's statement of claim had disclosed no cause of action whatsoever whether on facts or in law. The statement of claim is clearly flawed as it lacks the fundamentals of a cause of action, let alone a reasonable cause of action. (para 14) **A**
- (2) In Malaysia, the concept of judicial immunity is derived both from statute and common law. The relevant statutory provision dealing with judicial immunity is found in s. 14 Courts of Judicature Act 1964. (paras 20 & 21) **B**
- (3) The authorities clearly showed that the ambit of judicial immunity is wide. It protects a judge from all civil liabilities for all judicial and administrative acts necessary for a judge to carry out his duties effectively, so long as the judge acts in good faith. This is so even if the judge has acted "under some gross error, or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness" or he is "shown to have acted so perversely or so irrationally that what he did should not be treated as a judicial act". The only exception to judicial immunity is if the judge has accepted bribes, or is corrupt, or has perverted the course of justice or has committed any criminal conduct. In those circumstances, a judge may be liable to criminal prosecution and may even be removed from office, but he still cannot be liable in a civil action for damages. (paras 37 & 38) **C**
- (4) From the plaintiff's pleaded case, there is no allegation that the defendant was corrupt, or that he had accepted bribes, or that he had a personal interest in the matter. There is also no allegation of any criminal conduct. On the contrary, all the allegations in the statement of claim pertain to the conduct of the defendant in carrying out his judicial functions. The acts complained of, therefore, clearly fall within the ambit of the defendant's jurisdiction over a civil suit where he has substantive jurisdiction. (paras 43 & 44) **D**
- (5) The plaintiff's action against the defendant discloses no cause of action and is scandalous, frivolous and vexatious. It is also an abuse of the process of the court. Hence, it cannot be allowed to go for full trial. The plaintiff's remedy, if at all, must lie in an appeal. (paras 47 & 52) **E**
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A Case(s) referred to:

Anderson v. Gorrie [1895] 1 QB 668 (*refd*)
Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC (*refd*)
Boey Oi Teng (trading as Indah Reka Construction & Trading) v. Trans Resources Corporation Sdn Bhd [2002] 1 CLJ 405 HC (*refd*)

B Drummond-Jackson v. British Medical Association [1979] 1 All ER 1094 (*refd*)

Gabriel Peter & Partners v. Wee Chong Jin [1998] 1 SLR 374 (*refd*)
Garthwaite v. Garthwaite [1964] 2 All ER 233 (*refd*)
Garnett v. Ferrand [1827] 6 B&C 611 (*refd*)

C Government of Malaysia v. Lim Kit Siang [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC (*refd*)

Harvey v. Derrick [1995] 1 NZLR 314 (*refd*)
Hj Hussin Hj Ali & Ors v. Datuk Hj Mohamed Yaacob & Ors [1983] 2 MLJ 227 (*refd*)

D Indah Desa Saujana Corp Sdn Bhd v. James Foong Cheng Yuen & Anor [2005] 4 CLJ 925 HC (*refd*)

Law Hock Hua & Anor v. Timbalan Pendaftar Mahkamah Tinggi Kuala Lumpur & Anor [2006] 4 CLJ 300 HC (*refd*)
Lee Phet Boon v. Hock Thai Finance Corp Bhd [1994] 3 CLJ 465 HC (*refd*)

E Pengiran Othman Shah Pengiran Mohd Yusoff & Anor v. Karambunai Resorts Sdn Bhd & Ors [1996] 1 CLJ 257 CA (*refd*)

Riches v. Director of Public Prosecutions [1973] 2 All ER 935 (*refd*)
Sim Kie Chon v. Superintendent of Pudu Prison & Ors [1985] 2 MLJ 385
Sirros v. Moore & Ors [1975] 1 QB 118 (*refd*)

F Taaffe v. Dowries, 3 Moo PC (*refd*)
Technointan Holding Sdn Bhd v. Tetuan Tan Kim Siong & Teh Hong Jet [2006] 7 CLJ 541 HC (*refd*)

Tractors Malaysia Bhd v. Tio Chee Hing [1975] 2 MLJ 1 (*refd*)

Legislation referred to:

G Courts of Judicature Act 1964, ss. 14(1), 23, 25, 68
Federal Constitution, arts. 121(1), 122B(i)
Rules of the High Court 1980, O. 18 r. 19(1)(a), (b), (d)

Other source(s) referred to:

H PN Bhagwati, *The Challenge to the Profession by the Judiciary* [1987] 2 CLJ 101, p 103

For the plaintiff - M/s Mohammed Azmi & Assoc
For the defendant - Asmabi Mohammad SFC
For Bar Council (appearing as amicus curiae) - Robert Lazar (Sheila Lingam with him); M/s Shearn Delamore & Co

I Reported by WA Sharif

JUDGMENT**A****Ramly Ali J:**

[1] Enclosure 11 is an application made by the defendant pursuant to O. 18 r. 19(1)(a), (b) and (d) of the Rules of the High Court 1980 (RHC) whereby the defendant seeks to strike out the plaintiff's writ and statement of claim dated 29 September 2006 on the grounds that the pleadings disclose no reasonable cause of action and that the pleadings are scandalous, frivolous, vexatious and an abuse of the process of the court.

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[2] The defendant's application is premised on the following grounds, namely:

- (a) the plaintiff's writ and statement of claim do not disclose any reasonable or recognisable cause of action against the defendant;
- (b) the plaintiff's claim is scandalous, frivolous and vexatious and an abuse of the court process as the claim is obviously hopeless and unsustainable; and
- (c) the plaintiff's claim is scandalous, frivolous and vexatious as well as being an abuse of the court process as it is contrary to s. 14 of the Courts of Judicature Act 1964.

D**E****Factual Background****F**

[3] In his statement of claim the plaintiff pleaded that:

- (a) the defendant is a High Court Judge and is attached to the Civil Division of the High Court of Malaya at Kuala Lumpur;
- (b) at the material time the defendant was stationed at Civil High Court (3) and was handling Civil Action No. S3-33-33-2005 (the said "civil action");
- (c) the plaintiff was the "defendant" in the said civil action;
- (d) there were elements of malice, case fixing, judicial misconduct and biasness on the part of the defendant in the conduct of the said civil action;
- (e) since there were elements of judicial misconduct, case fixing, abuse of the defendant's position as a High Court Judge and the defendant's unbecoming attitude in the conduct of the matter, the defendant is therefore not protected by the immunity under the law; and

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- A (f) the attitude of the defendant in the conduct of the said civil action will result in the erosion of public's confidence in the judicial system and will ultimately cause its destruction.
- [4] The particulars of malice, case fixing and biasness are:
- B (a) the defendant took nine (9) months to hear an injunction matter;
- (b) an injunction matter required a number of written submissions; and
- C (c) as a judge hearing the matter the defendant was giving unbalanced direction ie,;
- (i) the defendant refused to hear the *inter parte* application which was fixed for hearing but had instead maliciously directed parties to file their written submissions. The directions caused the plaintiff to loose out almost six (6) months;
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- (ii) when the plaintiff in the said civil action withdrew encl. 3 (mareva injunction), the defendant tried to be smart and protected the plaintiff's rights by giving the Property Preservation Order pending the disposal of encl. 10 which is wrong in law;
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- (iii) on 14 February 2006 the defendant had maliciously struck out all submissions filed by parties and had directed parties to put a new submissions. The malicious act of the defendant had resulted in the plaintiff loosing another three (3) months;
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- (iv) the defendant did not look up when delivering his judgment and took only two (2) minutes to do so;
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- (v) the defendant was bias and malicious and gave two contrary orders;
- (vi) there was element to *mala fide* on the part of the defendant who had at all the times confused, played out and misdirected the plaintiff;
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- (vii) even though the plaintiff's case is clear cut and strong the defendant still gave protection to the "illegal contractors"; and
- I (viii) the defendant did not exercise his judicial powers properly by giving two (2) contradictory orders which resulted in the freezing of the plaintiff's accounts and causing the company to be paralysed;

- [5] The relief sought by the plaintiff in his statement of claim are: A
- (a) all orders made by the defendant in the said civil action be struck out;
 - (b) that the defendant is prohibited from further conduct of the matter; B
 - (c) defendant to pay the plaintiff RM30 million plus interest for loss of expectancy; and
 - (d) special and general damages and costs. C

Principles For Striking Out

[6] In order for an application under O. 18 r. 19(1) of the RHC to succeed, the defendant must be able to satisfy the court that the plaintiff's claim is plainly and obviously hopeless and unsustainable; scandalous, frivolous or vexatious, where the defences are unarguable D

(see cases: 1. *Tractors Malaysia Bhd v. Tio Chee Hing* [1975] 2 MLJ 1;

2. *Sim Kie Chon v. Superintendent of Pudu Prison & Ors* [1985] 2 MLJ 385;

3. *Bandar Builder Sdn. Bhd. & Ors v. United Malayan Banking Corporation Bhd.* [1993] 4 CLJ 7; F

4. *Pengiran Othman Shah bin Pengiran Mohd Yusoff & Anor v. Karambunai Resorts Sdn. Bhd. & Ors* [1996] 1 CLJ 257).

[7] The Federal Court in *Sim Kie Chon v. Superintendent of Pudu Prison & Ors* (*supra*) at p. 386 held: G

The principle governing the striking out of pleadings is clear in that it is only in plain and obvious cases that recourse should be had to the summary process under Order 18 rule 19 of the Rules of the High Court 1980; the summary procedure under this rule can only be adopted when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable'. H

[8] This view was repeated by the Federal Court in *Bandar Builder Sdn. Bhd. & Ors v. United Malayan Banking Corporation Bhd.* (*supra*) at p. 11: I

- A The principle upon which the Courts act in exercising its power under any of the four (4) limbs of Order 18 rule 19(1) of the RHC are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule and this summary procedure can only be adopted when it can be
- B clearly seen that a claim or answer is on the face of it 'obviously unsustainable'.

- [9] Further, it was said in *Haji Hussin bin Haji Ali & Ors v. Datuk Haji Mohamed bin Yaacob & Ors* [1983] 2 MLJ 227 at p. 230 that where a cause of action is doomed to fail, it must be
- C struck out to avoid unnecessary waste of time and expense. There, the Federal Court confirmed the decision of the High Court which had struck out the claim under O. 18 r. 19(1) of the RHC on the grounds of time-bar and applied the principles laid down in *Riches v. Director of Public Prosecutions* [1973] 2 All ER 935:
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- ... I do not want to state definitely that, in a case where it is merely alleged that the Statement of Claim discloses no cause of action, the limitation objection should or would prevail. In principle, I cannot see why not. If there is any room for an escape from the statute, well and good; it can be shown. But in the absence of that, it is difficult to see why a Defendant should be called on to pay large sums of his own money and a Plaintiff permitted to waste large sums of his own or somebody else's money in an attempt to pursue a cause of action which has already been barred
- E by the statute of limitations and must fail.
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Order 18 r. 19(1)(a) Of The RHC

- [10] Under O. 18 r. 19(1)(a) of the RHC the court may at any stage of the proceedings order to be struck out any writ in the action on the ground that it discloses no reasonable cause of action.
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- [11] An application under O. 19 r. 19(1)(a) of the RHC requires a perusal of the pleadings to ascertain whether it does in fact disclose a reasonable "cause of action". In *Government of Malaysia v. Lim Kit Siang* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 the Supreme Court defined 'cause of action' as:
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- ... a statement of facts alleging that a Plaintiff's right, either at law or by statute, has in some way or another, been adversely affected or prejudiced by the act of the Defendant in an action.
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[12] In *Gabriel Peter' & Partners (suing as a firm) v. Wee Chong Jin* [1998] 1 SLR 374 at p. 384 the Singapore Court of Appeal discussed the principles in determining what a “reasonable cause of action” is under O. 18 r. 19(1)(a) of the Rules of Court 1996 at p. 384 by reference to the case of *Drummond-Jackson v. British Medical Association* [1979] 1 All ER 1094:

A reasonable of action, according to his lordship, connotes a cause of action which has some chance of success when only the allegations in the pleadings are considered.

[13] In the context of O. 18 r. 19(1)(a) of the RHC, it is useful to remember that in perusing the plaintiff's pleadings the court is looking at the plaintiff who has pleaded his best case. The above principles are then applied to the plaintiffs' best case to see if those pleadings ought to be struck out.

[14] In the instant case, what is the plaintiff's cause of action as disclosed from the plaintiff's statement of claim?

The court finds that there is none at all, whether on the facts or in law. The statement of claim is clearly flawed as it lacks the fundamentals of a cause of action, let alone a reasonable cause of action. It so lacks for the simple reason that the plaintiff knows that there is in law and definitely on the facts, no cause of action that they can possibly plead or raise against the defendant. Any reference, especially to the defendant, is obviously based on mere conjecture and bare or fanciful allegations. No court should ever be abused or allow its machinery and system to be the stage of an obviously doomed case.

Order 18 r. 19(1)(b) And (d)

[15] Under O. 18 r. 19(1)(b) and (d) of the RHC, the court may at any stage of the proceedings order to be struck out any writ and statement of claim in the action on the ground that (b) it is scandalous, frivolous or vexatious; or (d) it is otherwise an abuse of the process of the court.

[16] The word “scandalous” is taken to mean “wholly unnecessary and irrelevant”, not just unpleasant allegations.

(see: *Boey Oi Teng (trading as Indah Reka Construction & Trading) v. Trans Resources Corporation Sdn. Bhd.* [2002] 1 CLJ 405; and *Technointan Holding Sdn. Bhd. v. Tetuan Tan Kim Siong & Teh Hong Jet* [2006] 7 CLJ 541).

- A [17] The words “frivolous or vexatious” on the other hand, mean “obviously unsustainable”.

(see: *Technointan Holding Sdn. Bhd. v. Tetuan Tan Kim Siong & Teh Hong Jet* (*supra*).

- B [18] The case of *Gabriel Peter* (*supra*) addressed the meaning of “an abuse of the process of the court”. At p. 384 the Court of Appeal, Singapore said:

- C The term ‘abuse of the process of the Court’, in Order 18 rule 19(1)(d), has been given a wide interpretation by the Courts. It includes considerations of public policy and the interests of justice. This term signifies that the process of the Court must be used *bona fide* and properly and must not be abused. The Court will prevent the improper use of its machinery. It will prevent the judicial process from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed and will depend on all relevant circumstances of the case. A type of conduct which has been judicially acknowledged as an abuse of process is the bringing of an action for a collateral purpose ... if an action was not brought *bona fide* for the purpose of obtaining relief but for some other ulterior or collateral purpose, it might be struck out as an abuse of the process of the Court.
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Judicial Immunity

- F [19] The most pertinent point to be considered in this application is the issue of judicial immunity in Malaysia.

[20] In Malaysia, the concept of judicial immunity is derived both from statute and common law.

- G [21] The relevant statutory provision dealing with judicial immunity is found in s. 14 of the Courts of Judicature Act 1964 (“CJA”). Section 14(1) of the CJA reads:

- H No Judge or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, nor shall any order for costs be made against him, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.

- I [22] At common law, one example of a case dealing with the principles of judicial immunity is the case of *Sirros v. Moore & Ors* [1975] 1 QB 118. Lord Denning, MR held at p. 132:

Ever since the year 1613, if not before, it has been accepted in our law that no action is maintainable against a Judge for anything said or done by him in the exercise of a jurisdiction which belongs to him. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes, cannot be made subject of civil proceedings against him. No matter that the Judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness, he is not liable to an action. The remedy of the party aggrieved is to appeal to a Court of Appeal or to apply for *habeas corpus*, or a Writ of error or *certiorari*, or take some step to reverse his ruling. Of course, if the Judge has accepted bribes or been in the least degree corrupt, or has perverted the course of justice, he can be punished in the Criminal Courts. That apart, however, a Judge is not liable to an action for damages. The reason is not because the Judge has any privilege to make mistakes or to do wrong. It is so that he should be able to do his duty with complete independence and free from fear.

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[23] And at p. 136 of the same case; His Lordship went on to say:

... Every Judge of the Courts of this land – from the highest to the lowest – would be protected to the same degree, and liable to the same degree. If the reason underlying this immunity is to ensure “that they may be free in thought and independent in judgment,” it applies to every Judge, whatever his rank. Each should be protected from liability to damages when he is acting judicially. Each should be able to do his work in complete independence and free from fear. He should not have to turn the pages of his books with trembling fingers, asking himself: “If I do this, shall I be liable in damages?”

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So long as he does his work in the honest belief that it is within his jurisdiction, then he is not liable to an action. He may be mistaken in fact. He may be ignorant in law. What he does may be outside his jurisdiction – in fact or in law – but so long as he honestly believes it to be within his jurisdiction, he should not be liable. Once he honestly entertains this belief, nothing else will make him liable. He is not plagued with allegations of malice or ill-will or bias or anything of the kind. Actions based on such allegations have been struck out and will continue to be struck out. Nothing will make him liable except it be shown that he was not acting judicially, knowing that he had no jurisdiction to do it.

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[24] The local case which comprehensively deals with the issue of judicial immunity is the case of *Indah Desa Saujana Corp. Sdn. Bhd. v. James Foong Cheng Yuen & Anor* [2005] 4 CLJ 925. At p.

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A 947 of this case, His Lordship Vincent Ng J applied with approval the passages in the case of *Sirros v. Moore & Ors* [1975] 1 QB 118 cited in the preceding paragraph.

B [25] His Lordship Vincent Ng J went on to hold as follows at pp. 951-952:

C From all the welter of case authorities, it is beyond question, and I would hold that section 14 of the CJA and common law afford complete immunity and protection to a Judge from all civil liabilities for all judicial acts in cases registered or presided over or assigned to be dealt with by him. And, this immunity is extant even if the Judge had acted 'under some gross error, or ignorance, or (his act) was actuated by envy, hatred or malice, and all uncharitableness ...' or he is 'shown to have acted so perversely or so irrationally that what he did should not be treated as a judicial act at all' (see *Sirros*, Harvey, Nakhla and Taylor).
D I am completely ad idem with Lord Buckley LJ that even if the Judge is 'shown to have acted so perversely or so irrationally that what he did should not be treated as a judicial act at all' the remedy is his removal from office rather than to sue him in a private action which would not be in the public interest as Judges
E should be able to do their work in complete independence and free from fear in having to perpetually ask the question: 'If we do this shall we be liable in damages'.

F [26] The English law of judicial immunity against civil liability for acts done by judges in their judicial capacity is rooted for back in their legal history. Its development and form owes much to the history of the judicial system which has also influenced the language in which the doctrine has from time to time been clothed, (per Buckley LJ in *Sirros v. Moore (supra)*). This immunity is in each
G case based on public policy.

[27] In *Anderson v. Gorrie* [1895] 1 QB 668, Lord Esher MR said:

H "The ground alleged from the earliest times as that on which this rule" that no action will lie for a judicial act "rests is that if such an action would lie the judges would lose their independence, and that the absolute freedom and independence of the judges is necessary for the administration of justice.

I [28] From the angle of public policy Ormrod LJ in *Sirros v. Moore (supra)* expressed his view as follows:

It is an established rule of public policy:

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... neither party, witness, counsel, jury, nor judge, can be put to answer civilly or criminally for words spoken in office; that no action of libel or slander lies, whether against judges, counsel, witnesses, or parties, for words written or spoken in the course of any proceeding before any Court recognised by law, and this though the words written or spoken were written or spoken maliciously, without any justification or excuse, and from personal ill-will and anger against the person defamed: per Lopes LJ in *Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson* [1892] 1 QB 431, 451.

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[29] In the Irish case of *Taaffe v. Dowries*, 3 Moo PC (reported in a note beginning at p. 36 decided in 1812; as cited by Ormrod LJ in *Sirros v. Moore (supra)*), Fox J said at pp. 51-52 as follows:

The principle at law, of exemption from being sued for matters done by judges in their judicial capacity, is of great importance. It is necessary to the free and impartial administration of justice, that the persons administering it should be uninfluenced by fear and unbiased by hope. Judges have not been invested with this privilege for their own protection merely: it is calculated for the benefit of the people, by ensuring to them a calm, steady, and impartial administration of justice; it is a principle coeval with the law of the land, and the dispensation of justice in this country; and is founded on the very frame of the constitution; it is to be met with in the earliest books of law; and has been continued down to the present time, without the authority or dictum to the contrary, that I have been enabled to find. My brother Mayne, who preceded me, has given a clear and lucid detail of the authorities, as they have arisen from time to time. Most of them were mentioned in the course of the argument at the bar. After the manner in which they have been stated by him, it becomes superfluous now for me to travel minutely through them again; but I think myself called upon, in assertion of this principle, so vitally necessary to the administration of justice, to maintain it in such a manner, as may be requisite to give it full effect and operation; still, however, not trenching in any manner on the rights of the subject, which this principle is intended to protect; no to injure or infringe. It appears to be most necessary that a judge administering justice shall not be liable to answer for acts done judicially by him, by the way of action or prosecution; – they are only answerable for their judicial conduct in the High Court of Parliament; and without the existence of this principle, it is utterly impossible that there could be such a dispensation of justice, as would have the effect of protecting the lives or property of the subject. A judge must – a judge ought to be uninfluenced

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- A by any personal consideration whatsoever operating upon his mind, when he is hearing a discussion concerning the rights of contending parties; otherwise, instead of hearing them abstractedly, a considerable portion of his attention must be devolved to himself. There is something so monstrous in the contrary
- B doctrine, that it would poison the very source of justice, and introduce a system of servility, utterly inconsistent with the constitutional independence of the judges, – an independence which it has been the work of ages to establish, and would be utterly inconsistent with the preservation of the rights and liberties of the subject.
- C [30] The Court of Appeal in New Zealand in the case of *Harvey v. Derrick* [1995] 1 NZLR 314 has also stressed the importance of public policy consideration to justify judicial immunity. Richardson J, in that case said:
- D A range of public interest considerations has been advanced by Courts and commentators to justify judicial immunity. The primary grounds are that the public interest requires an independent judiciary free from the fear of vexatious personal actions and judiciary immunity is necessary to protect the free and
- E independent exercise of judgment in the public interest; that it is crucial in a democracy that Judges be perceived as fair and responsible and judicial immunity is necessary to preserve the dignity and respect of the judicial system as a whole; and that without a rule of judicial immunity it may become increasingly
- F difficult to attract men and women of the highest character and ability to judicial office.
- G [31] The strength of this judicial immunity lies in the right of citizens to feel that when discharging his judicial duties a judge will have no more reason to be affected by fear than he will allow
- H himself to be subjected to influences of favour. Thus he is surrounded with an absolute immunity from civil proceedings for act done or words spoken in the exercise of his judicial office. But that immunity is in no sense a private right which might be regarded as having been conferred upon him which he then might
- I be said to enjoy. He is merely the repository of public right which is designed to ensure the administration of justice will be untrammelled by the collateral attacks of disappointed or disaffected litigants. A judge can, of course, be made to answer, and in a proper case pay dearly, for any criminal misconduct. Like any other citizen criminal proceedings may be brought against him. If need arose steps may be taken in accordance with law to remove him from office. In that sense, a judge is not 100%

immune. In other words, judicial immunity as discussed above not in any way confers a judge a status 'above the law'. It does not cover any act done by a judge in his personal capacity or done outside his official duties. If in the course of his official work he should fall into error, the matter can become the subject of appeal. If he should wrongly deprive a man of his freedom altogether, then, apart from appeal, there is the remedy of *habeas corpus*. But in relation to the performance of his judicial function the judge is immune from attack in civil proceedings.

[32] Section 14(1) of the Malaysian Courts of Judicature Act 1964 covers any "judge" (which refers to judges of the Superior Courts) as well as "other person acting judicially" (which includes Session Court judges, Magistrate, Registrar as well as Deputy Registrar and Senior Assistant Registrar, exercising their judicial functions or duties). The protection covers "any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limit of his jurisdiction." However, in order for this protection not to be abused by those persons "protected" under the section, he must "at the time in good faith believed himself to have jurisdiction to do so or order the act complained of".

[33] The expression "jurisdiction" seems to play an important role in interpreting s. 14(1) of the Courts of Judicature Act 1964. This is because the section covers acts done in cases where the judge has jurisdiction as well as cases where he has no jurisdiction provided that he at the material time in good faith believed himself to have jurisdiction. The initial need is to understand what is meant by the word "jurisdiction."

[34] When considering the ambit of the expression "jurisdiction" for present purposes, Diplock LJ in *Garthwaite v. Garthwaite* [1964] 2 All ER 233 pointed out that the word could be used in relation to the function of a judge in two different senses, when he said the followings:

In it's narrow and strict sense, the 'jurisdiction' of a validly constituted Court connotes the limits which are imposed upon its power to hear and determine issues between persons seeking to avail themselves its process by reference:

- (1) to the subject matter of the issue or;
- (2) to the persons between whom the issue is joined or; and

- A (3) to the kind of relief sought, or to any combination of these factors.

B In its wider sense it embraces also the settled practice of the Court as to the way in which it will exercise its power to hear and determine issues which fall within its 'jurisdiction' (in the strict sense) or as to the circumstances in which it will grant a particular kind of relief which it has 'jurisdiction' (in the strict sense) to grant, including its settled practice to refuse to exercise such powers, or to grant such relief in particular circumstances.

C [35] From the above observations by Diplock LJ it is clear that judicial immunity covers "jurisdiction" substantively provided by law as well as "jurisdiction" in the manner, conduct or practice and procedure in which such "jurisdiction" is exercised by the judge. If there is any limit to this jurisdiction of the judge it must be provided by federal law.

D [36] In the present case, the defendant is a judge of the High Court in Malaya. He was appointed by the Yang di-Pertuan Agong under art. 122B(i) of the Federal Constitution. Article 121(1) of the Federal Constitution prescribes the judicial power of the High Court and therefore by inference that of the defendant's as "may be conferred by or under federal law". The Courts of Judicature Act 1964 is federal law and it governs the powers and jurisdiction of the courts. In particular regard must be given to ss. 23, 25 and the Schedule to the Courts of Judicature Act 1964. These several provisions confer the High Court (and thereby the defendant) jurisdiction or authority to determine matters that fall within its jurisdiction (including local jurisdiction).

G [37] From the above authorities cited above, it is clear that the ambit of judicial immunity is wide. It protects a judge from all civil liabilities for all judicial and administrative acts necessary for a judge to carry out his duties effectively, so long as the judge acts in good faith. This is so even if the judge had acted "under some gross error, or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness" or he is "shown to have acted so perversely or so irrationally that what he did should not be treated as a judicial act".

H [38] The only exception to judicial immunity is if the judge has accepted bribes, or is corrupt, or has perverted the course of justice or has committed any criminal was conduct. In those circumstances, a judge may be liable to criminal prosecution and may even be removed from office, but he still cannot be liable in a civil action for damages.

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The Defendant's Acts Complained Of

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[39] That being the case, the question that arises in this instance is whether the defendant's actions come within the ambit of judicial immunity.

[40] In order to answer this question, it is pertinent to analyse the plaintiff's pleaded case as per the statement of claim.

B

[41] The plaintiff's grievances arise from the defendant's actions as the presiding judge in Civil Suit No. S3-23-33-2005. The plaintiff was the defendant in that suit. The plaintiff's complaint against the defendant are of 'malice, case fixing, judicial misconduct and bias' against the plaintiff in conducting the civil suit.

C

[42] The particulars of malice, case fixing, judicial misconduct and bias are pleaded in para. 6 of the statement of claim, and in summary are as follows:

D

- (i) the defendant took nine (9) months to dispose off an injunction application which required numerous written submissions;
- (ii) the defendant constantly gave contradictory directions, the details and examples of which are contained in para. 6.3 of the statement of claim, but in brief are as follows:
 - (a) the defendant intentionally delayed the hearing of an *inter partes* mareva injunction application to the detriment of the plaintiff, by directing parties to file numerous written submissions on the same issue; and
 - (b) the defendant awarded a Property Preservation Order to the plaintiff in the said civil suit notwithstanding that the plaintiff had withdrawn its mareva injunction application;
- (iii) the defendant refused to decide in favour of the plaintiff notwithstanding that the plaintiff introduced fresh facts and evidence;
- (iv) the defendant refused to vary the terms of the freezing of order to allow the plaintiff to receive monies for day-to-day administration of the plaintiff company; and
- (v) the defendant failed to carry out his obligations as a judge as he made two (2) contradictory orders and froze all the plaintiff's assets, thereby paralyzing the plaintiff company.

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- A [43] From the plaintiff's pleaded case as summarised above, there is no allegation that the defendant was corrupt, or that he accepted bribes, or that he had a personal interest in the matter. There is also no allegation of any criminal misconduct. All the allegations in the statement of claim pertain to the conduct of the defendant in carrying out his judicial functions.
- B

- C [44] It is therefore clear that the plaintiff's grievances relate to the defendant's conduct in discharging his duties in his capacity as a judge, and not in his personal capacity. The acts complained of clearly fall within the ambit of the defendant's jurisdiction over a civil suit where he clearly has substantive jurisdiction and the conduct or manner in which he exercised his jurisdiction procedurally.

D **The Plaintiff's Remedy**

[45] In *Law Hock Hua & Anor v. Timbalan Pendaftar Mahkamah Tinggi Kuala Lumpur & Anor* [2006] 4 CLJ 300, it was held at para. 20, p. 308 as follows:

- E It must be borne in mind that the grant of judicial immunity by section 14 of the Court of Judicature Act 1964 does not mean that an affected party is without remedies. Immunity from civil action against a judicial authority under section 14 simply means that even though one cannot sustain a civil action against a judicial authority other remedies nevertheless remain available to the party.
- F As observed by Lord Denning MR in the *Sirros* case, the right of appeal to reverse the decision or order, and the right to quash the decision by way of *certiorari* are some of the remedies. In fact his observations go even further to note that even when a criminal offence has been committed by a judicial authority, he can be subject to a criminal charge, but the liability in a civil action will not be and available action against him.
- G

[46] Similarly in *Lee Phet Boon v. Hock Thai Finance Corp Bhd.* [1994] 3 CLJ 465, the court held at p. 470:

- H So, with that it is clear that a declaration will not lie in regard to the two (2) impugned orders made respectively by the learned Judge and the Senior Assistant Registrar. The remedy for the Plaintiff in respect of any orders made by the Judge or the Senior Assistance Registrar in the exercise of their judicial powers lies in an appeal as spelt out under Order 56 of the Rules of the High Court and section 68 of the Court of Judicature Act 1964.
- I

[47] Hence, the plaintiff does have a remedy in relation to the grievances pleaded in the statement of claim. That remedy lies in an appeal (see s. 68 Court of Judicature Act).

Conclusion

[48] The importance of judicial immunity cannot be understated. In this regard, the statement by Lord Tenterden CJ in *Garnett v. Ferrand* [1827] 6 B&C 611, as quoted by Lord Denning MR in *Sirros v. Moore & Ors* [1975] 1 QB 118 at p. 132, aptly summarises the underlying importance of judicial immunity, thus:

This freedom from action and question at the suit of an individual is given by the law to the judges, not so much for their own sake as for the sake of the public, and for the advancement of justice, that being free from actions, they may be free in thought and independent in judgment, as all who are to administer justice ought to be.

[49] The Hon. Mr. Justice P.N. Bhagwati, Former Chief Justice of India in an article entitled "*The Challenge to the Profession by the Judiciary*" [1987] 2 CLJ 101 @ p. 103 said:

Each attack on a Judge for a decision given by him is an attack on the independence of the judiciary, because it represents an attempt on the part of those who indulge in such criticisms to coerce judicial conformity with their own preconceptions and thereby influence the decision making process. It is essential in a country governed by a rule of law that every decision must be made under the rule of law and not under the pressure of one group or another, no matter how sincerely motivated. If a Judge is to be in fear of personal criticism by political or pressure groups or other individuals while deciding a case, it would most certainly undermine the independence of the judiciary.

[50] The court is in full agreement with the learned Senior Federal Counsel, Puan Asmabi bte Mohamad, in her submissions:

It further behoves on this Court to have regard here to the public policy and interest involved in the principle of judicial immunity. The Defendant as a Judge was clearly acting judicially in exercise of his judicial duty. Actions of this nature should never be allowed to see the light of day "not because the Judge has any privilege to make mistakes or to do wrong. It is so that he should be able to do his duty with complete independence and free from fear. (see *Sirros v. Moore* @ page 125 DBOA).

- A [51] The court is also in full agreement with the learned counsel for the Bar Council Mr. Robert Lazar (Tetuan Shearn Delamore & Co.) in his submission:

B A judge must be able to perform his duties with complete independence and freedom from fear. Only then will members of the public have confidence in the judiciary and the administration of justice. This is the hallmark of all democratic societies in the world. Malaysia is no exception.

Decision Of The Court

- C [52] On the above considerations the court is satisfied that the plaintiff's action against the defendant discloses no cause of action; scandalous, frivolous and vexatious. It is also an abuse of the process of the court. The court also finds that this is the most appropriate case for the court to exercise its judicial discretion to
- D struck out the case at this stage of the proceedings and not to allow it to go for full trial.

- E [53] It is crystal clear that the plaintiff's claim is doomed to fail right from the outset. To let the claim to proceed for trial would mean the court is allowing itself to be a party to the absurdity created by the plaintiff. It will not only embarrass the defendant as a judge, but also the whole judicial system or administration of justice of the country. No judicial system can survive if claim of this nature is allowed to take its seat. In this regard, the court is
- F very pleased for the effort taken by the Malaysia Bar Council to voluntarily come forward as 'a friend of the court' (*amicus curiae*) to assist and enlighten the court on the issue and to make it's stand on it. The stand taken by the Bar Council in this matter is sound and clear ie, the defendant's actions and conduct in this
- G case fall squarely within the ambit of judicial immunity and that this suit is without basis and merit, and is unsustainable. The Bar Council has clearly done it's part in protecting and safeguarding the administration of the judicial system of the country, one of the main pillars of its functions under the Legal Profession Act 1976.
- H It is our sincere hope that individual lawyers and solicitors who are members of the Bar Council, would do the same to help in maintaining and preserving the integrity and independence of the judicial system.

- I [54] Therefore, the defendant's application to strike out the plaintiff's writ and statement of claim (*vide* encl. 11) is allowed with costs.
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